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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

GANNADIY KUZMINSKIY,

Defendant and Appellant.

C087433

(Super. Ct. No. 17FE019403)

Appointed counsel for defendant Gennadiy Kuzminskiy has filed an opening brief setting forth the facts of the case and asking this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We modify the judgment to impose a mandatory fine and assessment that were not imposed at sentencing, and affirm the judgment as modified.

## **BACKGROUND**

Defendant and L.G. were formerly married. In October 2017 L.G. was dating the victim, Alexander Y. During an argument between defendant and Alexander, defendant punched Alexander and slashed him with a knife. Alexander fled and defendant was eventually arrested. Defendant said he had lost his patience with Alexander sleeping with his ex-wife and trying to be a father to their children.

Defendant was charged with attempted murder with premeditation and deliberation (Pen. Code, §§ 664, 187, count one),<sup>1</sup> assault with a deadly weapon (§ 245, subd. (a)(1), count two), and dissuading a witness (§ 136.1, subd. (a)(2), count three). As to counts one and two, it was alleged that defendant personally inflicted great bodily injury (§ 12022.7, subd. (a)), and that he personally used a deadly or dangerous weapon during the assault offense (§ 12022, subd. (b)(1)).

On April 12, 2018, the information was amended to allege the deadly weapon enhancement under count one and defendant pleaded no contest to attempted murder in the second degree and admitted the enhancement in exchange for a stipulated sentence of eight years in state prison and dismissal of the remaining charges and allegations.

In May 2018 the court sentenced defendant to the midterm of seven years in state prison for the attempted murder offense and a consecutive one-year term for the deadly weapon enhancement. The court imposed a \$300 restitution fine (§ 1202.4), and a \$40 court security fee (§ 1465.8); it awarded defendant 205 days of actual credit and 31 days of conduct credit for a total of 236 days of credit (§ 2933.1). Defendant timely appealed.

## **DISCUSSION**

Counsel filed an opening brief setting forth the facts of the case and requesting that this court review the record to determine whether there are any arguable issues on

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. Thirty days have elapsed, and we have received no response from defendant.

After examining the record, we find no errors that would favor defendant, but have discovered that the trial court did not orally impose the mandatory \$30 court facilities assessment at sentencing. (Gov. Code, § 70373, subd. (a)(1) [“To ensure and maintain adequate funding for court facilities, [a \$30] assessment should be imposed on every conviction for a criminal offense . . . .”].) Although the court purported to “waive all these other fines, fees and costs” this assessment is mandatory, and we shall modify the judgment to impose it.

Further, while the court imposed the minimum \$300 restitution fine under section 1202.4, it failed to orally impose an identical \$300 parole revocation restitution fine and stay the fine unless parole was revoked, which was required. (§ 1202.45, subd. (a) [“In every case where a person is convicted of a crime and his or her sentence includes a period of parole, the court shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of section 1202.4”].) Nor was there any incorporation of the probation report into the sentencing colloquy. We modify the judgment to impose and stay the mandatory fine.

The amended abstract of judgment already reflects a \$300 restitution fine and matching parole revocation restitution fine. It should be amended to include the \$30 court facilities assessment that we have modified the judgment to include.

